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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/521,037	03/08/2000	Pawan R. Gupta	MOF-11	1918

22855 7590 07/22/2002

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EXAMINER

MARTIR, LILYBETT

ART UNIT

PAPER NUMBER

2855

DATE MAILED: 07/22/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/521,037

Applicant(s)

GUPTA, PAWAN R.

Examiner

Lilybett Martir

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-10,12-14 and 16-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-10,12-14 and 16-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 10.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-10, 12-14 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Proceq SA-Wire tension meter in view of Grade et al. (Pat.

4.423.639). Proceq SA teaches the claimed invention, including:

- A frame having a pair of ends, adapted to engage a said stressed cable, a jack mounted on said frame between it's ends for applying a force on the stressed cable, and measuring means on said frame, for measuring the deflection of the stressed cable (See Figure SM150 on page 4), as in claim 1.
- A hook, said hook connected to said jack and adapted for engagement with said stressed cable as in claim 2.
- The force of said jack, is applied to the stressed cable through the hook means as noted in the Figures of Page 1, as in claim 3
- A jack that applies a pre-set force to the stressed cable (Page 3, second paragraph), as in claims 5, 12 and 16.
- The frame shaped in a "V" shape, as noted in Figure SM150 in page 4, as in claims 7, 14 and 18.

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- Claims 8-10 disclose a method for detecting the amount of tension in a stressed cable using the claimed apparatus that is inherently disclosed in the combination of the provided references.

But he does not disclose:

- A hydraulic force imparting means, as in claim 1.
- Measuring means that include a gauge mounted onto said frame, as in claims 6, 13 and 17.

Grade et al. teaches an apparatus for indicating the tension in a line that has a hydraulic supporting structure composed by elements 12 and 39 that has a pressure gauge as in element 22 mounted onto it's frame.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the wire tension meter of Proceq SA by using the teachings of Grade et al. providing said wire tension meter with a hydraulic supporting structure and a pressure gauge for the purpose of furnishing means for controlling the force to be applied to the wire who's tension is going to be measured and means for measuring the force applied to the wire in order to determine it's tension, therefore making said wire tension meter versatile.

Claims 1-3,5-10,12-14, and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKernan (Pat. 3,174,334) in view of King (Pat. 3,653,258).

McKernan teaches the claimed invention, including:

- A frame 10 having a pair of ends as in elements 14 and 16 engaging a stressed cable as in element 18, a Jack mounted on a frame as in elements

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24,30,32,34 and 42, a measuring means on said frame as comprised by elements 70,72,74,78, and 80, as in claim 1.

- Hook means as in element 16 connected to the Jack as noted in figure 3, as in claim 2.
- The force of said Jack as in elements 24,30,32,34 and 42 being applied to the stressed cable 18 through said hook means 16 as noted in figure 3, as in claim 3.
- The jack as in elements 24,30,32,34 and 42 applying a pre-set or known force to the stressed cable 18 (Col. 1, lines 29-33), as in claims 5,9,12 and 16.
- The frame 10 having substantially a shape of a "V" as noted in the shape of elements 22 in figure 1, as in claims 7,14 and 18.
- Supporting a stressed cable as in element 18 at a selected pair of spaced apart points as in elements 14 and 16, applying a force to the stressed cable to deflect it by means of elements 24,30,32,34 and 42, and measuring the deflection of the stressed cable by means of elements 70,72,74,78, and 80, as in claim 8.

But he does not disclose:

- A hydraulic force imparting means, as in claims 1 and 8.
- The measuring means being a gauge mounted to the frame, as in claims 6,13 and 17.

King teaches a load measuring apparatus for ropes having hydraulic means to exert a deflecting force over a tensioned rope as comprised by elements

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24,24a,24b,23,23a and 22 and measuring means comprised by a gauge as in element 11 mounted on a frame as comprised by elements 4,8,and 2.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the cable tensiometer of McKernan using the teachings of the load measuring apparatus for ropes of King by providing said tensiometer with known hydraulic means to apply a force over the tensioned member and a gauge mounted to the frame for the purpose of making said device more reliable and efficient. Regarding the equations disclosed in claim 10, said equations are well known in the art, and it would have been obvious and expected to utilize said equations to calculate the tension on the tested cable for the purpose of manipulating the obtained data in a known manner to obtain results that are reliable and expected.

Response to Arguments

Applicant's arguments filed April 3, 2002 have been fully considered but they are not persuasive. Applicant's arguments are believed to be fully addressed in the office action presented above.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the fact that the pressure gauge of his tension testing device measures applied pressure and not applied tension) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

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In response to applicant's argument that his claimed invention is utilized for measuring the tension of a cable or a wire in concrete, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on April 3, 2002 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS**

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MADE FINAL. See MPEP § 609(B)(2)(i). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lilybett Martir whose telephone number is (703)305-6900. The examiner can normally be reached on 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Benjamin Fuller can be reached on (703)308-0079. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3432 for regular communications and (703)305-3432 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0956.

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Lilybett Martir
Examiner
Art Unit 2855



July 15, 2002



Benjamin R. Fuller
Supervisory Patent Examiner
Technology Center 2800